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3 June 1982

MEMORANDUM FOR THE RECORD

SUBJECT: NSC Meeting on-Status of FOIA Legislation

1. On 3 June Ken deGraffenreid of the National Security Council (NSC) held a meeting at NSC (OEOB) to discuss the status of FOIA legislation. The Agency was represented at the meeting by [redacted] OGC, and Jerry Prehn and [redacted] LLD. NSC Counsel Bob Kimmitt and Steve Grogan and Jeff Stewart of the Department of Justice (DoJ) also participated.

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2. [redacted] began the meeting by expressing some concern that the expected passage of the Hatch FOIA bill without provisions for exemption of the Intelligence Community could be misconstrued or misrepresented by the media and possibly Congress as a defeat for the Administration and the Community. [redacted] also was concerned that the Durenberger amendment, with its "identifiable damage" and mandatory "balancing test" stipulations might achieve some success in Congress in the present climate as a floor amendment to the Hatch bill.

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3. Steve Grogan of DoJ voiced strong reassurances that the Hatch bill would be voted on without further weakening amendments and he felt the Durenberger amendment, which he described as mainly a "Denton Stopper", had no chance of succeeding. DoJ maintained that the Hatch bill, as it stands, includes a considerable number (unspecified) provisions favoring the Community. DoJ was prepared to add amendments to the bill totally exempting the Community, should Durenberger introduce his amendment, but strongly favored separate legislation. DoJ also believes that Senator Hatch should be consulted on and support any additional amendments to the bill since his backing would be crucial.

4. DoJ indicated that the principal "life or death" opposition to any FOIA legislation, especially legislation exempting intelligence, came not from the public but from the media which are obsessed with the issue.

5. In the event of any attempt to attach the Durenberger or a similar amendment to future FOIA legislation, DoJ would strongly oppose such amendments, would recommend going for full exemption and, if necessary, would propose a Presidential veto. DoJ representatives repeated, however, that they do not believe the Durenberger amendment will get that far.

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6. DoJ also agreed with the Agency and NSC position that the separate FOIA legislation for the Community should be sought in the 98th Congress, but that it was already time to be laying down markers with influential groups and potential supporters of the bill. DoJ agreed to be in direct contact with Agency members present when DoJ had recommendations on where the Agency might seek such support. DoJ also agreed that the Administration should lay down a marker in the 97th Congress by having the Administration's bill introduced this session, but only after the Senate concludes its floor action on the Hatch bill, for fear that introduction of the former may derail passage of the latter. DoJ said they would recommend Hatch go to Senator Baker as soon as possible to discuss plans for floor action on the Hatch bill and Kimmitt of NSC agreed to do the same. DoJ will also seek to get the separate legislation up as early as possible in the 98th Congress in order to flush out any possible amendment proposals.



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✓ Jerry Brem  
Chief, Legislation Liaison

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LLD:JGP:rjg (7 June 82)